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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Cigelske, Jr. et al.
Serial No. : 10/065,571
Filed : October 31, 2002
For : System for Assembling Welding Apparatus
Group Art No. : 1725
Examiner : Len Tran

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

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APPEAL BRIEF PURSUANT TO 37 C.F.R. §§1.191 AND 1.192

Dear Sir:

This Appeal Brief is being filed in furtherance of the Notice of Appeal filed on August 11, 2006.

1. **REAL PARTY IN INTEREST:**

The real party in interest is Illinois Tool Works Inc., the Assignee of the above-referenced application by virtue of the Assignment to Illinois Tool Works Inc., recorded on, recorded at reel 013306, frame 0001.

2. **RELATED APPEALS AND INTERFERENCES:**

Appellant is unaware of any other appeals or interferences related to this Appeal. The undersigned is Appellant's legal representative in this Appeal. Illinois Tool Works Inc., the Assignee of the above-referenced Application, as evidenced by the documents mentioned above, will be directly affected by the Board's decision in the pending appeal.

3. **STATUS OF THE CLAIMS:**

Claims 1-23 are currently pending, and claims 1-23 are currently under final rejection and, thus, are the subject of this appeal.

4. **STATUS OF AMENDMENTS:**

All previous amendments have been entered. Appellant has submitted no additional amendments subsequent to the Office Action of April 11, 2006.

5. **SUMMARY OF THE CLAIMED SUBJECT MATTER:**

A welding apparatus (10) having an enclosure (12) and an end panel (14, 16) having a receptacle area (50) formed therein is set forth in claim 1. The welding apparatus also includes a base (26) having an end (28, 30) interfitted into the receptacle area (50) of the end panel (14, 16). *Application*, ¶31. The base (26) further includes at least one snap (42) having a distal end (44) with an opening (46) therein that extends outwardly from the end (28, 30) of the panel. *Application*, ¶30. The end panel (14, 16) includes at least one ramp (60) formed thereon that is generally in alignment with the at least one snap (42), whereby the distal end (44) of the at least one snap is engaged to the at least one ramp (60) to retain the end panel (14, 16) to the base (26). *Application*, ¶35.

Claim 10 sets forth a subassembly for a welding apparatus (10) having a molded plastic base (26) and a molded plastic end panel (14, 16) affixed together, the end panel (14, 16) having a receptacle area (50) formed therein and the base (26) having an end (28, 30) interfitted into the receptacle area (50) of the end panel (14, 16). *Application*, ¶31. The base (26) further includes at least one snap (42) having a distal end (44) with an opening (46) therein, the snap (42) extending outwardly from the end (28, 30) of the panel. *Application*, ¶30. The end panel (14, 16) has at least one ramp (60) formed thereon that is generally in alignment with the at least one snap (42),

whereby the distal end (44) of the at least one snap (42) is engaged to the at least one ramp (60) to retain the end panel (14, 16) to the base (26). *Application*, ¶35.

A method of assembling an end panel (14, 16) to the base (26) of a welding apparatus (10) is set forth in claim 17. The method includes the step of providing a molded base (26) with at least one snap (42) extending outwardly therefrom and having a distal end (44) and an elongated opening (46) formed therein. *Application*, ¶30. The method also includes the step of providing a molded plastic panel (14, 16) having at least one inclined ramp (60) formed thereon, the ramp (60) leading to a vertical rear wall (70) and having a recess (62) formed proximate the rear wall (70). *Application*, ¶35. The method further includes the step of inserting the molded base (26) into the molded plastic panel (14, 16) to cause the snap (42) to ride upwardly along the inclined ramp (60) and enter into the recess (62) to lock the distal end (44) of the at least one snap (42) against the rear wall (70) of the at least one ramp (60) to retain the base (26) to the end panel (14, 16). *Application*, ¶36.

6. **GROUND OF REJECTION:**

In the Office Action of April 11, 2006, the Examiner rejected all pending claims (1-23) under 35 U.S.C. §103(a) as being unpatentable over the single reference of Katooka et al. (USP 5,831,240).

7. **ARGUMENT:**

Rejection Under 35 U.S.C. § 103(a) Over Katooka et al.

The Examiner rejected claims 1-23 under 35 USC § 103(a) as being unpatentable over the single reference of Katooka et al. In the Final Office Action mailed April 11, 2006, the Examiner stated that “applicant’s claimed invention is just a modification of Katooka et al’s configuration to the locking between the end panel and the base... compris[ing] a snap with an opening on the end panel, and a ramp on the base.” *Office Action*, April 11, 2006, p. 3. The Examiner further stated that “it would have been obvious to one of ordinary skill in the art at the time of applicant’s invention was made to modify the ramp on either the base or the end panel, since that would have been a design choice.” *Id.* Appellant respectfully disagrees.

Appellant believes that a *prima facie* case of obviousness has not been established and one cannot be made based on the art of record. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. MPEP §2143. Second, there must be

a reasonable expectation of success, and both the reasonable expectation of success and the teaching or suggestion to make the claimed combination must be found in the prior art, not in applicant's disclosure. *Id.*, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. Appellant believes that a *prima facie* case of obviousness cannot be made based on the art of record because, as will be shown below, all the elements of the current claims are not present in the reference and there is motivation to modify the reference to achieve the current invention, other than Applicant's own invention disclosure.

Claims 1-9 and 21

In the current invention, claim 1 calls for, in part, a base having at least one snap having a distal end with an opening therein and extending outwardly from the end of a panel, the end panel having at least one ramp formed thereon that is generally in alignment with the at least one snap, whereby the distal end of the at least one snap is engaged to the at least one ramp to retain the end panel to the base.

As shown in Fig. 2, the welding apparatus 10 and enclosure 12 of the present invention includes a pair of snaps 42 extend outwardly from the ends 28, 30 of a base 26. The snaps 42 each have a distal end 44 and an elongated hole 46 formed therein. The snaps 42 are U-shaped in configuration, with the distal ends 44 being the closed ends of that U-shape. *Application*, ¶30. To secure the base 26 to end panel 16, a ramp 60 located on the end panel 16 engages the snap 42 by protruding thru the elongated hole 46 in the snap 42. *Application*, ¶35; *see also* Fig. 2.

Katooka et al. does not teach, disclose, or even suggest such a configuration. Rather, the structure in Katooka et al., as viewed in a light most favorable to the Examiner's interpretation, consists of a projection 310 located on the chassis 300, the projection having a protrusion 312 protruding outward from the tip end of that projection. *Katooka et al.*, Col. 6, lns. 5-21; *see also* Figs. 3A, 3B. The protrusion functions as a ramp for engaging a through-hole 106 in the front panel 100. As shown in Fig. 3A of Katooka et al., there is no ramp formed on the front panel 100 but merely a through-hole 106 formed therein. Therefore, in Katooka et al. the only protrusion is located on the projection 310, both of which are affixed to the chassis 300. That is, the "snap" and the "ramp" that the Examiner points to Katooka et al. as disclosing, are both affixed to the chassis. Furthermore, the projection 310 disclosed in Katooka et al. does not have "a distal end with an opening therein" as called for in the current claims. As shown in Figs. 3A-3D, the projection of Katooka et al. is solid and uniform in construction, with no opening therein. The

Katooka et al. projection 310 is constructed to engage a through-hole located on the front panel 100, thus a projection with an opening therein would be unsuited for this purpose. Therefore, it is clear that Katooka et al. fails to teach, disclose, or even suggest all the claim limitations set forth in claim 1.

The Examiner has continually insisted that Katooka et al. discloses an end panel having one snap with an opening and a base having one ramp. This is clearly contrary to the disclosure and teachings of the reference. A close examination of Katooka et al. and the teachings therein, as set forth above, clearly shows that the Examiner's interpretation of the prior art, and of what it discloses, cannot be supported.

The Examiner has admitted that Katooka et al. is different, in stating that it is "an opposite of applicant's claimed invention." However, the Examiner then makes a giant leap in concluding that "[i]t would have been obvious to one of ordinary skill in the art to modify either having the snap on the end panel or the base, since either way, there exists locking between the end panel and base." *Office Action*, supra at 3-4. Appellant believes the Examiner is overlooking longstanding legal precedent and basic rules of patent examination. The structures found in Katooka et al. and in the current claims are not simply "opposites" as claimed by the Examiner. However, even if they were, such is not enough by itself to create a *prima facie* case of obvious.

As stated earlier, Katooka et al. discloses a projection 310 located on the base. The projection has a protrusion 312 protruding outward from the tip end of that projection which could be said to function as a ramp to engage a through-hole 106. *Katooka et al.*, Figs. 3A, 3B. There is no ramp formed on the front panel 100 but merely a through-hole 106 formed therein. The "snap" and the "ramp" in Katooka et al. are both affixed to the base. This is not an opposite of the claimed invention but a different structure altogether that is more than a trivial difference. An accurate description of a possible opposite might be a projection located on the front panel, with the protrusion being formed on the base. Such is not the configuration in Katooka et al. and it is clear that the present claims do not read thereon.

In fact, the Examiner, by his own admission, previously agreed with Appellant's argument set forth above, stating that "Katooka et al fail (sic) to teach the claimed invention as claimed." *Office Action*, supra at 3. Merely stating that the current invention and the applied reference are opposites is not sufficient to establish a *prima facie* obviousness rejection under 35 U.S.C. §103(a) and does nothing to overcome the admission that the cited reference fails to teach the claimed invention. The Examiner's position regarding Katooka et al. and the current

invention being alleged opposites, and that Katooka et al. would have suggested the claimed system to one of ordinary skill in the art, are not supported by the evidence. As further evidence of this, the structure set forth in the current claims provides an improved and more secure connection over that disclosed in Katooka et al. and one which better prevents unwanted opening of the welding apparatus enclosure. As seen in Fig. 2 of the present invention, an access opening 72 is provided at the vertical rear wall 70 of the ramp which restricts access to the snap 42 used to detach the base 26 from the rear panel 16. A tool must be inserted into the access opening 72 to contact and push the distal end 44 of the snap 42 upwardly so that the snap 42 can be unlocked. This configuration provides improved security over the Katooka et al. projection 310 and protrusion 312 mechanism that engages the through-hole 106 which can be unlocked by simply pushing a finger inward on the protrusion. *Katooka et al.*, Figs. 3A, 3B and Col. 6, lns. 25-32. While the features just described are admittedly not recited in the present claims, Appellant believes that they unequivocally prove that the two are not simple opposites, and even if they were, it proves that there is a distinct advantage to the present invention over that of Katooka et al. Therefore, it is clear that the two structures are not mere opposites of one another and that the structure set forth in the current claims provides for a more secure connection that will restrict or hinder easy access to the high voltage contacts inside a welding apparatus over that disclosed in the cited reference.

Even assuming *arguendo* that the present invention and Katooka et al. are opposites, this is not, in and of itself, enough to support an obviousness rejection. There is nothing in patent law that says that an “opposite” is per se not patentable. As stated earlier, to establish a prima facie case of obviousness, the reference[s] must not only teach or suggest all of the claim limitations, it must also suggest or motivate the modifications thereto. MPEP §2142. Furthermore, the teaching or suggestion to make the claimed combination and/or modification must both be found in the prior art, and not based on applicant's disclosure. MPEP §2142. The fact that references can be combined or modified is not sufficient to establish prima facie obviousness, the reference must teach or suggest the desirability of the proposed modification. MPEP § 2143.01. Therefore, even if these structures were opposites, which they are not, a reference must be provided to support a finding that the opposites are interchangeable without any inventive step, or that there is a motivation in the prior art to modify the one to arrive at the other. No such reference has been provided here that shows such motivation. As such, not only does Katooka et al. fail to teach or

suggest all of the claim limitations of the present invention, but no reference has been provided to lend one to modify the configuration therein to achieve the present invention.

In light of at least the foregoing, a *prima facie* case of obviousness has not been established, and therefore, claim 1, and the claims dependent therefrom, are believed to be patentably distinct over Katooka et al.

Claims 10-16 and 22

Claim 10 calls for, in part, a subassembly for a welding apparatus including a base having at least one snap having a distal end with an opening therein and extending outwardly from the end of the base, and an end panel having at least one ramp formed thereon that is generally in alignment with the at least one snap, whereby the distal end of the at least one snap is engaged to the at least one ramp to retain the end panel to the base.

Similar to above with regard to claim 1, Katooka et al. simply does not teach, disclose, or even suggest the configuration called for in claim 10. Rather, the structure in Katooka et al., as viewed in a light most favorable to the Examiner's interpretation, is comprised of a projection 310 located on the chassis 300 and a protrusion 312 protruding outward from the tip end of that projection, the protrusion functioning as a ramp to engage a through-hole 106. *Katooka et al.*, Col. 6, lns. 5-21; *see also* Figs. 3A, 3B. The "snap" and the "ramp" in Katooka et al. are both affixed to the chassis 300. Furthermore, the projection 310 disclosed in Katooka et al. does not have "a distal end with an opening therein" as called for in the current claims. As shown in Figs. 3A-3D, the projection is solid and uniform in construction, with no opening therein. The projection 310 is constructed to engage a through-hole located on the front panel 100, and as such, is not configured to have an opening therein.

In light of at least the foregoing, a *prima facie* case of obviousness has not been established, and therefore, claim 10, and the claims dependent therefrom, are also believed patentably distinct over Katooka et al.

Claims 17-20 and 23

Claim 17 calls for a method of assembling an end panel to the base of a welding apparatus, the method comprising the steps of providing a molded base with at least one snap having a distal end and an elongated opening formed therein, the at least one snap extending outwardly therefrom; providing a molded plastic panel having at least one inclined ramp formed thereon leading to a vertical rear wall and having a recess formed proximate the rear wall; and inserting the molded base into the molded plastic panel to cause the snap to ride upwardly along

the inclined ramp and enter into the recess to lock the distal end of the at least one snap against the rear wall of the at least one ramp to retain the base to the end panel.

Again, as stated above, Katooka et al. does not teach, disclose, or suggest a structure having a base with a snap formed thereon and an end panel with a ramp formed thereon. The structure in Katooka et al., as viewed in a light most favorable to the Examiner's interpretation, is comprised of a projection 310 located on the base that functions as a snap, wherein the projection has a protrusion 312 protruding outward from the tip end of that projection, which functions as a ramp to engage a through-hole 106. *Katooka et al.*, Figs. 3A, 3B. As stated previously, the "snap" and the "ramp" in Katooka et al. are both affixed to the base.

Additionally, claim 17 sets forth that the ramp 60 called for therein is formed with a rear vertical wall 70 having a recess 62 formed proximate thereto. As shown in Fig. 4, snap 42 encircles ramp 60 and becomes locked in position as the distal end 44 of the snap 42 slides up upwardly inclined surface 68 of ramp 60 and snaps behind the vertical rear wall 70 into recess 62. *Application*, ¶36.

Such a configuration is clearly not taught, disclosed, or even suggested in Katooka et al. As detailed above, and as shown in Figs. 3A & 3B of Katooka et al., protrusion 312 is located on projection 310. *Katooka et al.*, Col. 6, lns. 5-21. As these two features are part of the same member, it is not possible for the projection 310 (i.e., snap) to ride upwardly along the inclined protrusion 312 (i.e., ramp) as is called for in claim 17. Furthermore, there is no recess formed proximate the protrusion 312 along a vertical rear wall, as called for in claim 17. The only recess present in Katooka et al. is through-hole 106, which is formed in the front panel 100 thereof, opposite from the protrusion located on the chassis 300. *Katooka et al.*, Figs. 3A, 3B. Thus, Katooka et al. does not disclose a ramp having a rear vertical wall with a recess formed proximate thereto.

In light of at least the foregoing, a *prima facie* case of obviousness has not been established, and therefore, claim 17, and the claims dependent therefrom, are also believed patentably distinct over Katooka et al.

8. **CONCLUSION**

In view of the above remarks, Appellant respectfully submits that the Examiner has provided no supportable position or evidence that claims 1-23 are not patentable. As argued above, Katooka et al. fails to teach or suggest each and every element as called for in the present claims and provides no motivation to modify the configuration therein to achieve the current invention, nor has the Examiner provided any motivation that one skilled in the art would modify the reference in such an alleged "opposite" manner. Accordingly, Appellant believes claims 1-23 are patentably distinct thereover. Applicant thus respectfully requests that the Board find claims 1-23 patentable over the prior art of record, direct withdrawal of all outstanding rejections, and direct the present application be passed to issuance.

Respectfully submitted,

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CLAIMS APPENDIX**In the Claims**

1. (Original) A welding apparatus comprising an enclosure, an end panel having a receptacle area formed therein and a base having an end interfitted into the receptacle area of the end panel, the base having at least one snap having a distal end with an opening therein and extending outwardly from the end of the panel, the end panel having at least one ramp formed thereon that is generally in alignment with the at least one snap, whereby the distal end of the at least one snap is engaged to the at least one ramp to retain the end panel to the base.

2. (Previously Presented) The welding apparatus as defined in claim 1 wherein the end panel and base are comprised of molded plastic materials.

3. (Original) The welding apparatus as defined in claim 1 wherein the at least one snap is a U-shaped configuration with the closed distal end extending outwardly from the molded end panel.

4. (Original) The welding apparatus as defined in claim 1 wherein the at least one snap comprises a pair of snaps formed at the end of the base and the at least one ramp comprises a pair of ramps formed in the receptacle area of the end panel.

5. (Original) The welding apparatus as defined in claim 1 wherein the receptacle area comprises angled internal lateral surfaces and the base includes angled external sides adapted to interfit in close proximity to the angled internal surfaces of the end panel to stabilize the affixation of the base and the end panel.

6. (Original) The welding apparatus as defined in claim 1 wherein the base has an upper surface and the receptacle area includes a plurality of vertically oriented ribs adapted to fit

over and contact the upper surface of the base to provide vertical stability to the base interfitted to the end panel.

7. (Original) The welding apparatus as defined in claim 1 wherein the at least one ramp formed within the receptacle area of the end panel has an upper surface inclined upwardly in the direction away from the base and ending in a rear vertical wall.

8. (Original) The welding apparatus as defined in claim 7 wherein the distal end of the at least one snap locks against the rear vertical wall of the at least one ramp.

9. (Original) The welding apparatus as defined in claim 8 wherein the end panel has an access opening to allow access to the distal end of the snap to enable the vertical lifting of the distal end to detach the distal end from its locking engagement with the rear vertical wall of the at least one ramp to detach the base from the end panel.

10. (Original) A subassembly for a welding apparatus comprising a molded plastic base and a molded plastic end panel affixed together, the end panel having a receptacle area formed therein and the base having an end interfitted into the receptacle area of the end panel, the base having at least one snap having a distal end with an opening therein and extending outwardly from the end of the base, the end panel having at least one ramp formed thereon that is generally in alignment with the at least one snap, whereby the distal end of the at least one snap is engaged to the at least one ramp to retain the end panel to the base.

11. (Original) The subassembly as defined in claim 10 wherein the at least one ramp has a top surface that is inclined upwardly in the direction away from the base to form a vertical rear wall, and the end wall has a recess proximate to the rear wall.

12. (Original) The subassembly as defined in claim 10 wherein the end panel has an access opening to allow a tool to reach the distal end of the at least one snap to move the distal end vertically.

13. (Previously Presented) The subassembly as defined in claim 10 wherein the at least one snap comprises a pair of snaps and the at least one ramp comprises a pair of ramps.

14. (Original) The subassembly as defined in claim 11 wherein the at least one snap comprising a U-shaped snap having a closed distal end.

15. (Original) The subassembly as defined in claim 13 wherein the receptacle area has lateral internal surfaces and the base has lateral external sides that are complementarily configured to the lateral internal surface so that the lateral external sides of the base fit in a close mating relationship within the lateral internal surfaces of the receptacle area of the end panel.

16. (Original) The subassembly as defined in claim 15 where the lateral internal surfaces of the base are angled surfaces.

17. (Original) A method of assembling a end panel to the base of a welding apparatus, the method comprising the steps of:

providing a molded base with at least one snap having a distal end and an elongated opening formed therein, the at least one snap extending outwardly therefrom,

providing a molded plastic panel having at least one inclined ramp formed thereon leading to a vertical rear wall and having a recess formed proximate the rear wall,

inserting the molded base into the molded plastic panel to cause the snap to ride upwardly along the inclined ramp and enter into the recess to lock the distal end of the at least one snap against the rear wall of the at least one ramp to retain the base to the end panel.

18. (Original) The method as defined in claim 17 wherein the step of providing a molded base with at least one snap comprises providing a molded base with a pair of U-shaped snaps.

19. (Original) The method as defined in claim 17 wherein the molded plastic panel has an access opening proximate the rear wall of the ramp and the method further comprises the step of inserting a tool through the access opening to move the distal end of the snap vertically upwardly to unlock the snap from the rear wall of the ramp.

20. (Previously Presented) The method as defined in claim 17 wherein the step of providing at least one snap comprises providing a pair of snaps and the step of providing at least one ramp comprised providing a pair of ramps.

21. (Previously Presented) The welding apparatus as defined in claim 1 wherein the at least one snap of the base is movable relative to the base to allow passage of the at least one ramp therealong.

22. (Previously Presented) The subassembly as defined in claim 10 wherein the at least one ramp of the end panel is immovably connected thereto in response to the at least one snap moving thereacross.

23. (Previously Presented) The method as defined in claim 17 wherein the step of inserting the molded base further comprises deflecting the snap along the inclined ramp during insertion.

RELATED PROCEEDINGS APPENDIX

--None--

EVIDENCE APPENDIX

--None--